IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

C.R.A. NO. 814 OF 2001

Shri Radhakisan G. Bihani ... Petitioner
VS.
Mrs. S.S. Mokadam . ... Respondent

Mr.P.J. Pawar for petitioner
Mr. S.N. Chandrachod for respondent

CORAM: D. G. KARNIK **J.**
DATE: 9th October 2006

P.C.:

1. This revision application is directed against the order of eviction dated 15th February 2001 passed by the competent authority under section 13-A(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (fort short "the Act").

2. The respondent is the owner of a flat bearing flat no. A-6, situate at CTS No. 3172, on the 2nd floor, in the building known as Raka Palace, at Chinchwad, Pune (for short "the suit flat"). By an agreement of leave and licence dated 5th

June 1996, the petitioner took on licence the suit flat, agreeing to pay monthly licence fee of Rs.3000/-, for a period of 11 months from 5th June 1996 to 5th May 1997. As the petitioner - failed and neglected to vacate the suit flat at the end of the period of licence the respondent filed an application under section 13-A(2) of the Act for possession before the competent authority. By a judgment and order dated 15th February 2001 the competent authority allowed the application and directed eviction of the petitioner. That order is impugned in this revision petition.

3. The period of licence expired on 5th May 1997. Before the expiry of the period of licence, the respondent wrote a letter to the petitioner on 31st March 1997 and requested him to vacate the suit flat by 5th May 1997. The petitioner did not vacate the suit flat but orally pleaded personal and financial problems and promised to vacate it after two months. However, as he did not keep up the promise the respondent issued an advocate 's notice dated 12th January 1999 calling

upon the petitioner to vacate the suit flat and on failure of the petitioner to comply the respondent filed the application under section 13-A(2) of the Act.

4. The petitioner resisted the application by filing the written statement and firstly contended that the respondent was not the owner of the premises. He pleaded that respondent only had an agreement for purchase of the suit flat and since the sale deed was not yet executed in her favour , she was not the owner of the premises. The petitioner thus denied the title of the respondent. In the written statement the petitioner secondly contended that after the expiry of the period of licence the respondent had accepted rent of Rs.3500/- per month thereby creating fresh tenancy in his favour and therefore the respondent was not entitled to an order of possession.

5. It appears that the plea raised in the written statement that the respondent was not the owner of the premises was given

up by the petitioner as no issue regarding the title of the respondent was framed. At the time of the hearing before the competent authority no grievance as to the title of the respondent was raised. Assuming that such an issue was to be raised, in view of the provisions of section 116 of the Evidence Act, the petitioner could not have disputed the title of the respondent. Admittedly the petitioner came in possession of the suit flat under the leave and licence agreement. In the circumstances she was not entitled to deny the title of the respondent. I have mentioned the contents of the written statement denying the title of the respondent, only to show the dishonest conduct of the petitioner. Having obtained the possession under the leave and licence agreement from the respondent, the petitioner went to the extent of even denying her title, dishonestly.

6. After careful consideration of the evidence adduced before it the competent authority held that the payment of Rs.3500/- per month after the period of licence did not amount to

creation of a fresh tenancy. The respondent in the notice has stated that after the expiry of the period of licence the petitioner pleaded personal as well as financial difficulties and requested the respondent to permit him to continue to occupy the premises for a couple of months more. Reply to this notice has not been filed on record. Out of sympathy, perhaps misplaced, the petitioner was allowed to occupy the premises for a couple of months after the expiry of the licence. Obviously the petitioner had to pay compensation and mere acceptance of compensation after the expiry of the period of licence, in the absence of any other evidence, would not create a fresh licence or tenancy in favour of the petitioner. The finding of fact recorded by the competent authority that no fresh tenancy was created is a plausible finding of fact and cannot be interfered with in exercise of revisional jurisdiction.

7. While dismissing the revision application the competent authority has held that respondent is entitled to

compensation at the rate of Rs.7,000/- per month from 6th May 1997. Learned counsel for the petitioner submits that the competent authority had no jurisdiction to award compensation. This court has held that the competent authority can order possession but cannot order payment of compensation. In these circumstances the award of Rs. 7000/- as compensation/ licence fees from 6.5.1997 would have to be set aside. However, while admitting the revision application this court had directed the petitioner to pay Rs.3500/- per month to the respondent and also to pay the arrears. Accordingly the amount at the rate of of Rs.3500/- has been deposited by the petitioner and part of the amount has been withdrawn by the respondent. The respondent is permitted to withdraw the balance amount from this court.

8. Subject to this modification, regarding payment of compensation at the rate of Rs.7000/- per month, the revision application is dismissed.

At the request of the learned counsel for the petitioner

the operation of this order is stayed for a period of two months, subject to the petitioner filing an undertaking in this court in the usual form on or before 20th October 2006.

(D.G. KARNIK J.)